

REMARKS

1. USPTO Publication Error Regarding Priority Date

Applicant respectfully points out a publication error in the priority date of the subject application. The recently published US application incorrectly reports the priority date as February 23, 2005 and the correct priority date is March 2, 2004. The correct priority date was filed with the US National Phase application on August 24, 2006. Applicant specifically makes the correct priority date of March 2, 2004 of record in this case.

2. Remarks to Restriction Requirement

The Examiner has rejected the claims at issue for the reasons of record and requests restriction for eight different species. The Examiner alleges that the claims fall into the following groups: Group I claims drawn to a method of administering zingibain to a food to effect food tolerance in a subject; Group II claims drawn to a method of utilizing zingibain to increase the efficiency of alcohol production from food cereals; Group III claims drawn to a method of using zingibain to cleave gluten in preparing a bakery product; Group IV drawn to a food product comprising zingibain to increase its water content; Group V claims drawn to a food product that contains zingibain to effect food tolerance in a subject; Group VI drawn to a method of administering zingibain to treat a condition; Group VII claims drawn to a method of administering zingibain to a meat product to cleave prions; and Group VIII claims drawn to a method of using zingibain in cell harvesting to cleave fibrinogen.

Applicants hereby provisionally elect Group I claims drawn to a method of administering zingibain to a food product to effect food tolerance in a subject. The claims readable on this election include claims 35-38. Such election has been made with traverse and without prejudice or disclaimer of Applicant's right to traverse similar restrictions in future divisional or continuation applications.

The provisional election of the Group I claims should not be construed as an

abandonment of the invention of the non-elected claims of Groups II-VIII. Applicant expressly reserves the right to file one or more divisional applications drawn to such non-elected Group.

Applicants respectfully assert that as a whole, the restriction requirement parsing out all eight Groups is improper, and that some of the Groups are not independent or distinct or lack unity of invention. In fact, the Examiner has failed to explain why Groups I and V are distinct in a way that forces restriction under either PCT Rule 13.2 or 37 C.F.R. §1.475. Applicants contend that the group I claims, which are drawn to a method of using a food product, and group V claims to the food product itself, while separately patentable, are not independent or distinct in a way which requires restriction. The product and the use of that product should be patentable and should not increase any search burden on the examiner. 37 C.F.R. §1.475 defines "special technical features" as "those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art." In the Group I and Group V claims, it is not zingibain that is the special technical feature, it is zingibain in a food product (Group V) and its use (Group I) to specifically effect food tolerance in a subject. The Examiner has made no contention that the inventions of these two Groups are in any way "independent" of each other, nor has he explained why these Groups represent claims with different special technical features aside from the fact that each Group mentions zingibain. While Applicants accept that these Groups are patentably distinct from one another, they are clearly not independent or distinct inventions for the reasons stated above or as required under 37 C.F.R. §1.475. Therefore, Applicants respectfully contend this restriction election is improper and be removed.

Concluding Remarks

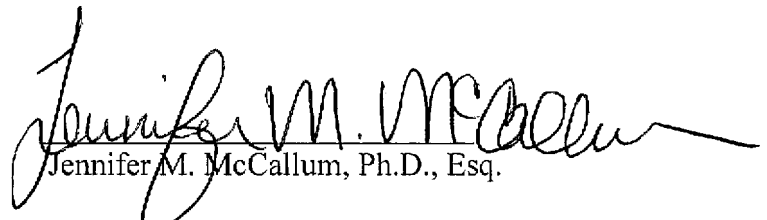
In view of the above provisional election and arguments, an Office Action on the merits is respectfully requested at an early time.

If the Examiner notes any further matters which would be expedited by a telephonic interview, she is requested to contact Dr. Jennifer M. McCallum at the telephone number listed below.

It is believed that no additional fees are due for the application; however, if this is incorrect, the Director is authorized to charge any deficiency or overpayment to Deposit Account No. 502679.

Respectfully submitted,

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Date


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